

ORIGINAL

OPEN MEETING ITEM

COMMISSIONERS
KRISTIN K. MAYES - Chairman
GARY PIERCE
PAUL NEWMAN
SANDRA D. KENNEDY
BOB STUMP



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ARIZONA CORPORATION COMMISSION

2010 JAN 28 P 2:35

DATE: JANUARY 28, 2010

ARIZONA CORPORATION COMMISSION
DOCKET CONTROL

DOCKET NOS.: T-03434A-09-0477 and T-04293A-09-0477

TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Yvette B. Kinsey. The recommendation has been filed in the form of an Order on:

CIMCO COMMUNICATIONS, INC. and
COMCAST PHONE OF ARIZONA, LLC
(TRANSFER)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and thirteen (13) copies of the exceptions with the Commission's Docket Control at the address listed below by **4:00 p.m.** on or before:

FEBRUARY 8, 2010

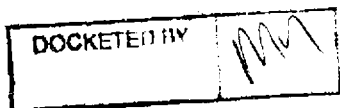
The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Open Meeting to be held on:

FEBRUARY 18, 2010

For more information, you may contact Docket Control at (602)542-3477 or the Hearing Division at (602)542-4250. For information about the Open Meeting, contact the Executive Director's Office at (602) 542-3931.

Arizona Corporation Commission
DOCKETED

JAN 28 2010



ERNEST G. JOHNSON
EXECUTIVE DIRECTOR

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This document is available in alternative formats by contacting Shaylin Bernal, ADA Coordinator, voice phone number 602-542-3931, E-mail SABernal@azcc.gov

1
2 **BEFORE THE ARIZONA CORPORATION COMMISSION**

3 COMMISSIONERS

4 KRISTIN K. MAYES, Chairman
5 GARY PIERCE
6 PAUL NEWMAN
7 SANDRA D. KENNEDY
8 BOB STUMP

9 IN THE MATTER OF THE JOINT APPLICATION
10 OF CIMCO COMMUNICATIONS, INC. AND
11 COMCAST PHONE OF ARIZONA, LLC FOR
12 APPROVAL OF THE TRANSFER OF CUSTOMER
13 BASE FROM CIMCO COMMUNICATIONS, INC.,
14 TO COMCAST PHONE OF ARIZONA, LLC.

DOCKET NO. T-03434A-09-0477

DOCKET NO. T-04293A-09-0477

DECISION NO. _____

15 ORDER

16 Open Meeting
17 February 18, 2010
18 Phoenix, Arizona

19 **BY THE COMMISSION:**

20 * * * * *

21 Having considered the entire record herein and being fully advised in the premises, the
22 Arizona Corporation Commission ("Commission") finds, concludes, and orders that:

23 FINDINGS OF FACT

24 1. On October 6, 2009, CIMCO Communications, Inc. ("CIMCO") and Comcast Phone
25 of Arizona, LLC ("Comcast Phone of Arizona") (collectively "the Applicants"), filed a joint
26 application with the Arizona Corporation Commission ("Commission") for expedited consideration
27 and approval to transfer the customer base of CIMCO to Comcast Phone of Arizona. In addition, the
28 joint application seeks approval to cancel CIMCO's Certificate of Convenience and Necessity
("CC&N") once the transfer is complete and waiver of the Commission's Slamming and Cramming
Rules.

2. On October 23, 2009, the Applicants filed a request for waiver of A.A.C. R14-2-1107,
which governs the notice requirements for discontinuance or abandonment of competitive local
exchange telecommunications services in Arizona. The Applicants requested in the alternative, a

1 waiver of A.A.C. R14-2-1107(B), which requires publication of legal notice of the proposed
2 discontinuance or abandonment of service in all affected areas in the service territory.

3 3. On November 4, 2009, the Applicants filed responses to Staff's First Set of Data
4 Requests. On the same date, the Applicants filed a request for waiver of A.A.C.R14-2-2001 *et. seq.*,
5 which prohibits unauthorized charges on a customer's bill.

6 4. On November 13, 2009, the Applicants filed an Affidavit of Publication, showing that
7 legal notice of the joint application had been published on November 6, 2009, in *The Arizona*
8 *Republic*, a newspaper of general circulation in CIMCO's and Comcast Phone of Arizona's service
9 territories.

10 5. On December 22, 2009, the Commission's Utilities Division Staff ("Staff") filed a
11 Staff Report recommending approval of the transfer of CIMCO's customer base to Comcast;
12 cancellation of CIMCO's CC&N; expedited consideration by the Commission of the joint
13 application; approval of the joint application without a hearing; and wavier of the Commission's
14 Slamming and Cramming Rules.

15 6. Staff further recommends that Comcast Phone of Arizona file as compliance items in
16 this docket:

- 17 a. Notice of the Federal Communications Commission's ("FCC") approval of the
18 transfer of CIMCO's assets to Comcast Phone of Arizona, within 30 days of such
19 approval;
- 20 b. Written confirmation that CIMCO's customer base has been transferred to Comcast
21 Phone of Arizona and upon such confirmation, Staff recommends cancelling
22 CIMCO's CC&N;
- 23 c. Revised conforming tariffs, incorporating the rates, terms and conditions of service
24 that are included in CIMCOs tariffs, within 60 days of the effective date of a Decision
25 in this matter; and
- 26 d. An affidavit confirming that CIMCO's customers in Arizona were provided with
27 notice of the transfer transaction and that CIMCO customers may elect to continue or
28 discontinue service with Comcast Phone of Arizona, without prejudice or regard to

contractual obligations, within ninety (90) days of receiving such notice.

7. CIMCO is an Illinois corporation with its headquarters located in Oakbrook Terrace, Illinois.¹ CIMCO is authorized to provide competitive interLATA/intraLATA resold telecommunications services, except local exchange services, in Arizona pursuant to Decision No. 61577 (March 15, 1999).² CIMCO's customer base consists primarily of medium-sized businesses and enterprise customers. In Arizona, CIMCO has twelve business customers and no residential customers.³

8. CIMCO is authorized by the FCC to provide international and domestic interstate telecommunications services as a non-dominant carrier.⁴

9. Comcast Phone of Arizona is a Delaware limited liability company, with its principal place of business located in Philadelphia, Pennsylvania.⁵ Comcast Phone of Arizona has an Arizona office located in Tucson, Arizona.⁶ Comcast Phone of Arizona's ultimate parent company is Comcast Corporation, a publicly traded company. Comcast Phone of Arizona provided audited consolidated financial statements, showing that Comcast Corporation had total assets of approximately \$113 million for the year ending December 31, 2008.⁷ The joint application states that Comcast Phone of Arizona relies on the financial resources of its parent company.

10. Comcast Phone of Arizona is authorized to provide competitive resold and facilities-based local exchange and long distance telecommunications services in Arizona pursuant to Decision No. 69408 (April 16, 2007).

Transfer Transaction

11. The Applicants are requesting approval to transfer the customer base of CIMCO to Comcast Phone of Arizona. On September 16, 2009, CIMCO and Comcast Phone of Arizona and certain Comcast Phone of Arizona affiliates entered into an Asset Purchase Agreement, to purchase

¹ Application at 1.

² Id.

³ Application at 2.

⁴ Id.

⁵ Id.

⁶ Id.

⁷ Application at Attachment A.

CIMCO's assets including but not limited to, CIMCO's customer base.⁸ The purchase agreement also allows for certain affiliates of Comcast Phone of Arizona in other states to acquire CIMCO's customer base as well as other assets in those states.⁹ In Arizona, CIMCO does not have any other assets, other than its customer base.¹⁰ Under the Asset Purchase Agreement, Comcast Phone of Arizona will provide service to the affected customers under the rates, and terms and conditions set forth in CIMCO's contracts and tariffs on file with the Commission.¹¹ Comcast Phone of Arizona does not anticipate any immediate changes to CIMCO's tariffs; however, the application states that Comcast Phone of Arizona reserves the right to make changes consistent with its contractual obligations and applicable state law.

12. The Applicants assert that the Asset Purchase Agreement is in the public interest because it will ensure that Arizona telecommunications customers continue to enjoy high quality services at the same rates, and terms and conditions as they previously have enjoyed; CIMCO customers will continue to receive services from an experienced and qualified carrier; and CIMCO customers will have access to expanded and more advanced service offerings.¹² The Applicants request expedited approval of the joint application, so that consumers may reap the benefits of the transaction sooner.¹³

13. The Applicants anticipate completing the transfer transaction as soon as all regulatory approvals by state commissions, and the FCC, have been received.

Cancellation of CC&N

14. The Applicants request cancellation of CIMCO's CC&N once the transfer transaction has been completed. CIMCO has no employees in Arizona. According to the Staff Report, although Comcast affiliates have Arizona-based employees whose work efforts contribute to the services provided by Comcast Phone of Arizona, no specific employees are allocated to Comcast Phone of Arizona. (S.R. at 4) Therefore, Staff believes the proposed transfer should not result in any layoff of

⁸ Application at 4.

⁹ Id.

¹⁰ Id.

¹¹ Application at 5.

¹² Id.

¹³ Id.

1 Arizona employees. (Id.) CIMCO does not hold any customer deposits and does not have a
 2 performance bond or irrevocable sight draft letter of credit on file with the Commission.¹⁴ Therefore,
 3 Staff believes no plan to refund customer deposits is needed. (S.R. at 4)

4 15. In the joint application, the Applicants also request waiver of A.A.C. R14-2-1107.
 5 Under the rule, local exchange telecommunications carriers offering competitive services and seeking
 6 to discontinue or abandon services, are required to file an application with the Commission setting
 7 forth the following:

- 8 a. Any reasons for the proposed discontinuation of service or abandonment;
- 9 b. Verification that all affected customers have been notified of the discontinuance or
 abandonment, and that all affected customers will have access to an alternative local
 exchange service provider;
- 10 c. Where applicable, a plan for the refund of deposits;
- 11 d. A list of all alternative utilities providing the same or similar services in the
 geographic area.

12 The rule further requires the telecommunication company to, within 20 days of filing its
 13 application to discontinue or abandon service, to publish legal notice of the application in all counties
 14 affected by the application. The notice shall state that interested persons have 30 days from the
 15 notice to file objections to the application or request a hearing.

16 16. The Applicants state that A.A.C. R14-2-1107 is not applicable to this situation because
 17 the transfer transaction involves the purchase of CIMCO's assets (i.e., customer base) and is not a
 18 discontinuation or abandonment of services.¹⁵ The Applicants also state that current CIMCO
 19 customers will receive at least 30 days notice of the transfer transaction as required by the FCC
 20 customer migration rules.¹⁶ Further, the Applicants assert that requiring them to comply with A.A.C.
 21 R14-2-1107 "would be confusing for customers to receive a notice regarding a CIMCO
 22 discontinuance of service or for the planned customer transfer notice to include a discussion
 23 regarding a discontinuance of service since no affected customer will be discontinued as a result of
 24 the transaction."¹⁷

25 17. Although the Applicants requested waiver of A.A.C. R14-2-1107 and in the
 26

27 ¹⁴ Applicants response to Staff's Data Requests dated November 4, 2009.

¹⁵ Applicants filing dated October 23, 2009.

¹⁶ Id.

¹⁷ Id.

1 alternative, waiver specifically of R14-2-1107 (B), on November 13, 2009, the Applicants docketed
2 an Affidavit of Publication stating that legal notice had been published in a newspaper of general
3 circulation on November 6, 2009. The notice informed customers of the pending transfer transaction;
4 that upon completion of the transfer Comcast Phone of Arizona would be providing services to
5 CIMCO customers under the same rates, terms and conditions; that additional notice would be
6 provided to CIMCO customers 30 days prior to the closing of the transfer transaction; and that any
7 objections to the application could be filed with the Commission.

8 18. The Applicants are also requesting waiver of the Commission's Slamming
9 (A.A.C.R14-2-1901 *et. seq.*) and Cramming Rules (A.A.C. R14-2-2001 *et. seq.*). Generally, the
10 Slamming Rules require telecommunications companies to get authorization from the customer prior
11 to switching them to another telephone company. The Cramming Rules prohibit, among other things,
12 any recurring charges to a customer's bill without prior authorization. Here, the Applicants assert
13 that affected customers will receive notice prior to being transferred from CIMCO to Comcast Phone
14 of Arizona.¹⁸ The Applicants provided a copy of a proposed notice to be sent to affected customers
15 thirty (30) days prior to the transfer transaction closing date.¹⁹ The proposed notice also included a
16 list of alternative carriers providing the same or similar service within the affected geographic area.²⁰

17 19. Staff reviewed the Applicants' proposed notice and believes waiver of A.A.C. R14-2-
18 1107 and the Commission's Slamming and Cramming rules is appropriate. (S.R. at 3) Staff explained
19 that the Applicants' proposed notice describes the transfer transaction; informs affected customers
20 that there will be no change in the rates, and terms and conditions of service; and that affected
21 CIMCO customers may change to an alternative telecommunications carrier of their choice. (Id.)

22 20. Consumer Services reported that no complaints have been filed against Comcast
23 Phone of Arizona and CIMCO in Arizona from January 1, 2006 through October 20, 2009.

24 21. Comcast Phone of Arizona and CIMCO are in good standing with the Commission's
25 Corporation Division.

26 22. Comcast Phone of Arizona and CIMCO are current on filing their 2008 Annual

27 ¹⁸ Applicants filing dated October 23, 2009.

28 ¹⁹ Application at Exhibit B.

²⁰ Applicants response to Staff's Data Request dated November 4, 2009.

1 Reports and are in compliance with the Commission.

2 **Conclusion**

3 23. Both of the Applicants are in good standing with the Commission and in compliance
4 with Commission rules and regulations. Under the proposed transfer transaction, affected customers
5 will to continue to receive service under the same rates, and term and conditions; transition of
6 CIMCO's customer base to Comcast Phone of Arizona will be seamless; customers will be able to
7 take advantage of the expanded services offered by Comcast Phone of Arizona; and affected
8 customers have the option to switch to an alternative carrier without penalty. Legal notice detailing
9 the proposed transfer transaction and the pending application was provided and no objections to the
10 application have been filed with the Commission. Staff has determined that cancellation of CIMCO's
11 CC&N is appropriate and the cancellation will not result in the layoff of any Arizona employees and
12 CIMCO holds no customer deposits. Based on the above factors, we find that the transfer of
13 CIMCO's customer base to Comcast Phone of Arizona and the cancellation of CIMCO's CC&N
14 upon completion of the transfer transaction is in the public interest.

15 24. In regards to the waiver of A.A.C. R14-2-1107 and the Commission's Slamming and
16 Cramming Rules, we find it appropriate to grant the Applicants' request for waiver. Here, the
17 Applicants published legal notice of the application detailing the proposed transfer transaction; the
18 Applicants will provide affected customers with 30 days notice prior to the transfer transaction
19 closing date; the notice to affected customers will include a list of alternative telecommunications
20 providers offering similar services in the affected geographic area; and the notice will allow affected
21 customers to switch to an alternative telecommunications provider, without penalty. Based on those
22 factors, we agree with Staff's recommendation that waiver of A.A.C. R14-2-1107 and the
23 Commission's Slamming and Cramming Rules is appropriate.

24 25. Staff's recommendations are reasonable and should be adopted.

25 **CONCLUSIONS OF LAW**

26 1. The Applicants are public service corporations within the meaning of Article XV of
27 the Arizona Constitution and A.R.S. §§ 40-281 and 40-282.

28 2. The Commission has jurisdiction over the Applicants and the subject matter of the

1 application.

2 3. Notice of the joint application was given in accordance with Arizona law.

3 4. The transfer of CIMCO's assets, including customers, is in the public interest.

4 5. Cancellation of the CIMCO's CC&N is in the public interest.

5 6. Comcast Phone of Arizona is a fit and proper entity to receive the transfer of
6 CIMCO's customer base, subject to Staff's recommendations set forth herein.

7 7. Pursuant to A.R.S. § 40-282, the Commission may issue decisions regarding
8 Certificates of Convenience and Necessity for certain telecommunications services without a hearing.

9 8. Staff recommendations are reasonable and should be adopted.

10 **ORDER**

11 IT IS THEREFORE ORDERED that the joint application of *CIMCO Communications, Inc.*
12 and Comcast Phone of Arizona, LLC to transfer the customer base of CIMCO Communications, Inc.,
13 to Comcast Phone of Arizona, LLC, is hereby approved, subject to the following Ordering
14 Paragraphs:

15 IT IS FURTHER ORDERED that Comcast Phone of Arizona, LLC, shall file with Docket
16 Control, as a compliance item in this docket, notice of the Federal Communications Commission's
17 approval of the transfer transaction described herein, within thirty (30) days of such event.

18 IT IS FURTHER ORDERED that Comcast Phone of Arizona, LLC shall file with Docket
19 Control, as a compliance item in this docket, written confirmation that CIMCO Communications, Inc,
20 has transferred its customer base to Comcast Phone of Arizona, LLC, and upon such confirmation
21 CIMCO Communications, Inc's Certificate of Convenience and Necessity shall be cancelled without
22 further Order of the Commission.

23 IT IS FURTHER ORDERED that Comcast Phone of Arizona, LLC shall file with Docket
24 Control, as a compliance item in this docket, revised and conforming tariffs, adopting the rates, and
25 terms and conditions of service in CIMCO Communications, Inc's tariffs on file with the
26 Commission, within sixty (60) days of the effective date of this Decision.

27 IT IS FURTHER ORDERED that Comcast Phone of Arizona, LLC shall file with Docket
28 Control, as a compliance item in this docket, an affidavit confirming that CIMCO Communications,

Inc.'s customers in Arizona received notification that they could elect, within ninety (90) days of receiving the notice, to continue or discontinue service with Comcast Phone Arizona, LLC without prejudice or regard to contractual obligation.

IT IS FURTHER ORDERED that the Comcast Phone of Arizona, LLC and CIMCO Communications, Inc.'s request for waiver of A.A.C. R14-2-1107 and the Commission's Slamming and Cramming Rules (A.A.C. R14-2-1901 *et. seq.*, and A.A.C. R14-2-2001 *et. seq.*) regarding the transfer transaction described herein, is hereby granted.

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

CHAIRMAN

COMMISSIONER

COMMISSIONER

COMMISSIONER

COMMISSIONER

IN WITNESS WHEREOF, I, ERNEST G. JOHNSON, Executive Director of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this _____ day of _____, 2010.

ERNEST G. JOHNSON
EXECUTIVE DIRECTOR

DISSENT _____

DISSENT _____

YBK:db

1 SERVICE LIST FOR:

CIMCO COMMUNICATIONS, INC. and COMCAST
PHONE OF ARIZONA, LLC

2
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T-03434A-09-0477 and T-04293A-09-0477

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